IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISCELLANEOUS PETITION NO.4 OF 2000

Mr.Minoo Rustomji Shroff & Ors. .. Petitioners

Vs.

Charity Commissioner & Ors. .. Respondents

Mr.R.A.Dada Sr.Counsel with Pal Modi with G.Joshi i/b M/s.Pardiwala & Co. for the petitioners

Mr.P.C.Patel, A.G.P. for respondent no.1 Charity Commissioner

Ms.Z.S.Irani for the intervenors

Mr.Parways Bhumgare for Intervenors

Mr.Phiroz Amrodiwala and Rustom Tirandaz respondent in person

Mr.R.M.Sethna i/b Maneksha Sethna for respondent no.2

CORAM : S.U.KAMDAR, J

DATED : 1ST APRIL, 2005

ORAL JUDGEMENT :

1. The present petition is filed interalia seeking relief for modification of the scheme which was settled by this court in Suit No.689 of 1906 on 18.6.1910 and has been amended from time to time by

various orders passed by this Court. The present Miscellaneous Petition is filed for a further amendment of the scheme of the trustees of the Parsee Panchayat Trust. Some of the material facts of the present case are as under:

2. Originally in suit no.689 of 1906 the scheme was sanctioned by this court on 18.6.1990 pertaining to the election of trustees of the funds and immovable properties of the Parsee Panchayat. The said scheme is in force as on date. Briefly speaking the scheme interalia provides for establishment of an Electoral College known as 'Anjuman Committee' to be constituted as contemplated under the scheme. It is contemplated under the scheme that the said committee must consist of Parsees coming from two separate streams. One by General Election from the General Register of the Parsee maintained by the Parsee Panchayat and other called as Donor Members of the Anjuman Committee. In a nutshell the constitution of the Anjuman Committee is comprising of two streams of Parsees. One is Donor Members who have donated specific sum of money and by mere donation

has become a member of the Anjuman Committee and the second is a general category of parsees who register themselves with the parsee Panchayat and whose name appears on the register maintained by the Parsees and which is known as 'General Register'. It is these members whose name appears in the General Register are empowered to elect certain members as the members of the 'Anjuman Committee' along with the donor members of the 'Anjuman Committee'. Originally the scheme provided a ratio of 1:1 i.e. one donor member of the anjuman committee will have one elected member from the General Register of the Parsees as an elected member on the Anjuman Committee.

3. Sometime in or about January/February 1999, the trustees of the Parsee Panchayat have framed a further amendment to the scheme and objections were invited from the members of the Parsee Community. The trustees have after considering the said objections have now formulated proposals for proposed amendment to the said scheme. In brief following proposals are framed for amendment of the scheme:

(a) Originally the amount of donation fixed for donor members was Rs.15000/-. It is proposed to enhance this to Rs.25,000/- or more.

(b) The ratio of 1:1 donor member to the elected members is sought to be altered by providing the ratio 1:2 i.e. one donor member equivalent to have two elected members on the Anjuman Committee.

(c) It has been provided that if in any constituency there are less number of elected members than the donor member then every constitutuency will be entitled to fill in deficiency by electing more than one person from the other constituency.

(d) It has been provided that the term of the trustees should not exceed 21 years and on expiry of his period of 21 years he shall not be re-eligible for election.

(e) It is proposed that the security deposit for the purpose of contesting the election of trustees

to be enhanced from Rs.500 to Rs.5000/- and if a candidate does not get atleast 100 votes the said security deposit is liable to be forfeited.

4. The aforesaid proposal was discussed at the meeting of the trustees. Majority of the trustees have approved the proposal and accepted the same. However, two of the trustees namely respondent no.2 and 3 before me have dissented from the said proposal and have not agreed to the proposal put forward by the majority of trustees who are 5 in number. According to the respondent no.2 and 3 the scheme for election of trustees by an indirect method through the 'Anjuman Committee' as existing today should be scrapped. According to respondent no.2 and 3 the method of election should be direct i.e. the Parsees whose name appears on the general register should be entitled to elect the trustees on the Principles of Universal, Adult Franchise Respondent no.2 and 3 have also opposed various other amendments on various grounds. However, essentially the ground of challenge has been that Universal Adult Franchise scheme must be introduced and existing scheme which has been formulated by

this court should be substantially altered in the aforesaid direction. It has been also prayed that proposed amendment to the scheme should not be adopted because it would only mean that existing scheme of indirect election of the trustees via the Anjuman Committee will continue perpetually.

5. At the hearing of the Miscellaneous Petition the proposals are strongly opposed both by respondent no.2 and 3 as well as various intervenors and interalia it has been contended that the scheme should be modified not in terms of proposed amendment as envisaged by trustees but substantial modifications as contended by them should be accepted by the Court.

a. It has been contended by respondent no.2 that this court has no jurisdiction in view of diverse provision of the Bombay Public Trusts Act, 1950 and Charity Commissioner and/or City Civil Court alone has jurisdiction to consider the present petition for modification of the present scheme of the trust.

b. It has been contended that the proposals which are put forward are totally absurd. People with money power having donated a paltry sum of Rs.25000 are being entitled to vote for the trustees election whereas poor Parsees are required to contest first election to the Anjuman Committee to become eligible to vote for the election of the trustees. Those Parsees who have not been successful to reach the Anjuman Committee are not in a position to even vote for the trustees of the Parsee Panchayat. It has been also contended that except Bombay all over India the Parsee Panchayats have adopted a universal Adult Franchise as a principle for voting of the trustees and therefore the Parsee Panchayat at Bombay also should adopt the same. Some of the intervenors have contended that the scheme of an indirect election is not a practical one since it requires to elect large number of Anjuman Committee members in the segment of general election which will be now in proportion of 1:2 with the donor members. The right conferred on the donors to vote merely on the donation is absolutely void and cannot be enforced . It also tantamounts to discrimination between two Parsees

in similar situation. It has been further suggested that there should be a limitation in age of the trustees who are eligible to become member. No trustee should be permitted to be a life time trustee of the Parsee Panchayat.

c. It has been also contended that the clarification should be issued to the proposed amendment under which now the trusteeship is restricted to a term of 21 years maximum. That no person who has been a trustee for total three terms or for the total number of 21 years shall be eligible for election. With the aforesaid objection it has been contended that this court should not accept the proposal as it is but either reject the same outright or modify the same as required and necessary on the given facts and circumstances of the case.

6. The learned counsel Ms.Sethna appearing for the respondent no.2 has interalia contended that this court has no jurisdiction to entertain the petition. He has taken me through the various

provisions of Bombay Public Trusts Act, 1950 particularly the definition of the word "Court" under s.2(4), the provision of s.50, s.50(A), s.52, s.85 and s.86 of the Bombay Public Trust Act, 1950. It has been interalia contended that the word court defined by the provisions of s.2(a) means in the Greater Bombay, the City Civil Court and elsewhere, the District Court. It has been further contended that the application by way of Miscellaneous Petition would not lie in this court because for framing of a scheme or variation or alteration therein an application should be made to the Charity Commissioner u.s.50 clause (iv)(j) of the Bombay Port Trusts Act, 1950 and thus, he alone would have jurisdiction to alter, amend, verify or form a new scheme for the election of trustees of Parsee Panchayat. It has been contended that u/sec.52 the provision of s.92 and 93 of Civil Procedure Code has been repealed and they cease to apply to the Public Trusts and therefore the present proceedings initiated in this court is totally beyond the jurisdiction of this court and cannot be entertained. This issue of jurisdiction has also been supported by other intervenors.

7. Mr.Sethna has relied upon the Judgment of the Gujarat High Court in the case of Jai Ranchhod Bhogilal Sevan and etc. v. Thakorelal Pranjivandas Jumkhawalal and others etc. reported in AIR 1985 Gujarat 1 Full Bench Pg.1 as well as the Judgment in the case of Yasinmian Amirmian Faroqui & Ors v. I.A.Shaikh & Ors. reported in Gujarat Law Reporter 1977 Pg.54 and has contended that the provision of s.92 and 93 of the Civil Procedure Code would not applicable once the provision of s.52 of Bombay Public Trusts Act 1950 is enacted specifically lays down that the provision of said Civil Procedure Code shall not apply in the case of the public trust and the trusts which are governed by the provision of Bombay Public Trusts Act, 1950.

8. The learned counsel Mr.Dada appearing for the petitioner has on the other hand drawn my attention to the provisions of s.92 and 93 of Civil Procedure Code, 1908. Mr.Dada the learned counsel for the petitioner has also drawn my attention to the Judgment of the Apex Court in the case of Raje

Anandrao Vs. Shamrao and others reported in AIR 1961 SC 1206 particularly para 6 to 10 of the said judgment and has interalia contended that this court will have a power to modify the scheme if the same is settled in a suit by passing a decree reserving thereunder right to apply for alterations and modifications of the scheme much prior to the provision of Bombay Public Trusts Act 1950 are enacted. It has been contended that the provision of s.52 of the Bombay Public Trusts Act, 1950 would only apply if the suit is filed for settlement of the scheme subsequent to the amendment of the Act but in a case where the scheme is already settled u.s.92 and 93 of the Civil Procedure Code and the scheme reserves its power to further act or modify the scheme in such cases the provision of s. 92 and 93 will continue to govern the situation and provision of s.52 of the Bombay Public Trusts Act, 1950 r.w s.50 (4) would not be applicable. Though the aforesaid judgment of the Apex Court do not consider the provisions of Bombay Public Trusts Act. The said judgment of the Apex Court has been followed by the learned Single Judge of this Court in the case of Petitioner itself and the learned

single Judge has in his judgment delivered in Miscellaneous Petition No.270 of 1969 decided on 2.4.1970 has held as under:

> "Mr.Zaiwala on behalf of Mr.B.K.Karanjia has raised a preliminary contention to the hearing of this petition. He urged that this Court has no jurisdiction to entertain and dispose of this petition. He submitted that the proper remedy for the Trustees is to file a suit in accordance with the provisions of section 50 of the Bombay Public Trusts Act, 1950. He also opposed the amendments suggests by the Trustees on the ground that they did not give much wider franchise to the members of the Parsee Committee. He said that the members of the Anjuman Committee should be elected on the basis of adult franchise by the members of the Parsee Committee. However, he suggested that such an amendment would be a substantial alteration f the scheme sanctioned by this court and the proper remedy of his client would be to adopt appropriate legal proceedings as may be permitted by law. So far as the Charity commissioner is concerned, he has submitted to the orders of the Court and he has no objection to the petition being allowed.
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> The first question that has to be considered is whether this court has jurisdiction to entertain this petition. Clauses 88, 90, 91, 94 and 95 of the Scheme sanctioned by this Court provide for the procedure to be adopted for modification or alteration of the Scheme. Under clause 88 it is competent to a majority of the Trustees at any time, to submit to a judge of the High Court in chambers for sanction any proposals for alteration in or additions to the provisions of this scheme. This clause further provides that the trustees shall give notice to the Advocate General, which having regard to the provisions of the Bombay Public trust Act has to be given to the charity Commissioner. Clause 90 provides

> for the manner in which such an application has to be made. Clause 91 provides for publication of such an application in the newspapers. Clause 94 gives liberty to the Judge in chambers to permit any members of the Parsee Committee to appear in person or through Counsel or attorney. Clause 95 is a consequential clause and it says that any alteration or modification that is sanctioned by the Judge in chambers shall form part of the scheme. Thus, under the scheme as framed by this Court, the High Court has jurisdiction to entertain a petition for alteration or addition to the provisions of the scheme."

9. In the aforesaid Judgment the Single Judge of this court has followed the judgment of the Apex Court and has held that the provision of s.50 of Bombay Public Trusts Act, do not apply to the cases of a kind where the scheme is sought to be altered by virtue of the power reserved under the scheme while passing a decree prior to the enactment of Bombay Public Trust Act, 1950. It has been held that irrespective of the provisions of the said Bombay Public Trust Act this court alone shall have jurisdiction to modify the scheme which is settled by it while passing a decree.

10. In my opinion in the view of the Judgment of the Apex Court where the provision of s.92 and 93 has been considered and the Judgment of the

Single Judge of this court which has been decided following the apex court judgment in the case of Raje Anandrao (Supra) I am of the opinion that the issue of jurisdiction to entertain the present Misc. Petition and decide the same is squarely and directly covered and therefore, I am required to hold that notwithstanding the provisions of s.52 of the Bombay Public Trust Act, 1950 in respect of the scheme settled by this court under the decree prior to enactment of the said Act if it reserves a right to alter or modify the scheme then this court shall continue to have jurisdiction to alter, modify or verify the scheme but shall have no jurisdiction to replace and/or substitute the scheme in its entirety.

11. In the present petition admittedly the scheme was framed on 18.6.1910 in Suit No.689 of 1906 which has been amended from time to time by virtue of the power reserved under the said scheme. In view thereto this court has reserved power to amend by virtue of the provisions of the scheme itself by way of an application for amendment the scheme and not by a separate suit . Thus, I am in

agreement with the view taken by the learned single Judge in Misc.Petition No. 270 of 69 and accordingly I hold that this court has jurisdiction to entertain the present petition.

12. This now takes me to the more contentious issue of Universal Adult Franchise raised by the intervenors and respondent nos.2 and 3. It has been contended that all Parsees must be given a full power to vote trustees directly and not through the via media of Anjuman committee. It has been further contended that this direct election ought to be on the basis that every person having age of more than 18 years entitled to vote. It seems that the scheme providing for a voting by the donor members directly by virtue of donation is substantially opposed. Plainly speaking there could be no doubt that the the Adult Franchise is the best method by which an election ought to be carried out. It is also no doubt true that by mere donation any person ought not and should not permitted to become a member of the Anjuman Committee. It is because it would plainly seem that money power can be used to become member of

the Anjuman Committee so as to enable them to vote directly without being elected by the General Members through the General Register to the Anjuman Committee.

13. However, the 5 of the trustees who are in majority have proposed only a minor modification to the scheme keeping intact the original system of donor member being made direct members to the Anjuman Committee on the strength of their donation. It has been contended by the learned counsel for the petitioner that the changes to the scheme ought to be gradual and therefore as and by way of part modification they have put forward the present proposal that the donation amount should be enhanced from Rs.15000 to Rs.25000 and ratio of elected member of the Anjuman Committee of 1:1 i.e. one donor member to one elected member be further modified to 1 donor member to 2 elected members i.e.1:2. Apart from the aforesaid contentions the intervenor and Respondent have also contended that making this kind of election process is totally unreasonable and impracticable and it merely requires large number of members to be elected to

the Anjuman Committee by the General Parsees whose name appears on the General Register. It has been contended that it is high time that the court should refuse all the changes suggested by the majority of trustees to be incorporated by this court in modification of the said scheme. On the other hand the learned counsel for the petitioner has drawn my attention to the Division Bench Judgment in Appeal No.1137 of 1987 in Misc.Petition No. 137 of 1985 in which the identical issue came up for consideration Paragraph 12 and 13 of the judgment are reproduced here under:

> "12. We do not propose to accept the invitation extended to us by Mr.Sethna to radically alter the Scheme for the election of the Trustees of the Parsee Panchayat of Bombay. Under clause 90 of the scheme, proposals for the modification of the Scheme should be placed before the Court by a majority of Trustees. In the alternative, such proposals may come as a result of a requisition made by a majority of the Anjuman committee under Clause 98. Any proposal for such alteration or addition may be sanctioned by the Judge in chambers and thereafter would be incorporated and form part of the Scheme. In our view clause 98 does not give to this court a completely free hand to frame a fresh Scheme altogether which may not be supported by the majority of Trustees or a majority of the members of the Anjuman committee. In our view, this would not be a correct interpretation of clause 98. Even if we assume that the Court has powers to amend or alter the proposals before it

> submitted by the Trustees or by the members of the Anjuman committee, the Court should be slow in exercising such powers. It would not therefore, be proper for us to ignore the proposals placed before us by the Trustees and frame an altogether different scheme as suggested by Mr.Sethna.
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> 13. Undoubtedly, there can be various types of Schemes for election of the Trustees. Two views are possible on whether the Donor Members should or should not be allowed to vote and on the extent of such a right to vote. We are however, not her to consider the formation of a Scheme in a vacuum. The proposal before us which is backed by the majority of the Trustees seeks to increase the limit of donations which would qualify a donor for being on the Donors' Register. The modifications which are advertised on 20th November 1988 appear to us to be reasonable. We accordingly give our sanction to the modifications as advertised on 20th November 1988, which are already set out earlier. The modifications are set out in clauses 1, 2 and 3 of the advertisement set out above."

14. In the aforesaid Judgment of the Division Bench the power of the court for modification of the scheme is circumscribed by holding that under clause 98 of the scheme the court has no power to completely frame a fresh scheme altogether which is not supported by the majority of trustees or majority of members of the Anjuman Committee. It has been also held that even though two views are possible about the right to vote of donor members still unless the proposals are brought forward

before the court by the majority of trustees this court would not be entitled to modify such a scheme. In the present case before me the majority of trustees have brought the proposal only of a minor modification to the said scheme as indicated herein above Hence, it is not possible for me to accept any of the objections or contentions raised by respondent no.2 and 3 and/ or Intervenor in the present proceedings. However, I would like to make it clear that the proposal providing for 21 years for a person to be a trustee of a trust must obviously mean that a number of years for which a person can be a trustee of a Parsee Panchayat ought not to exceed 21 years in any manner whatsoever.

15. With the aforesaid clarification I accept the modification to the scheme as proposed by the petitioner and make the petition absolute in terms of prayer clause (a) and (b). However, there shall be no order as to costs.